

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

TAB LEASING, INC.

Employer

Case No. 8-RC-16605

TEAMSTERS, CHAUFFEURS & HELPERS LOCAL UNION NO. 40
A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.¹

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time truck drivers including semi-drivers, straight truck drivers and loader / shuttle drivers, but excluding mechanics and mechanic-helpers, tire-man, wash boy, shop foreman, office manager, rate clerk, log / auditor safety employees, professional employees, dispatcher, terminal manager, assistant terminal manager, janitorial and clerical employees, technical employees, sales and professional employees, guards and supervisors as defined in the Act and all other employees.

There are approximately 28 employees in the unit found to be appropriate. The Parties have stipulated to the composition of the unit described above.

¹ The Parties filed post-hearing briefs, which have been carefully considered. Upon the entire record in this proceeding, the undersigned finds: the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

The Employer is an Ohio corporation operating an over-the-road interstate and intrastate general commodity freight hauling service from its terminal located in Galion, Ohio. The Employer is currently a party to a "Drivers Contract" with the Iberia Drivers Association, an employee organization that qualifies as a labor organization under Section 2(5) of the Act.

ISSUE

Whether the current agreement between the Employer and the Iberia Drivers Association, with a fixed term commencing on January 1, 2000 and concluding June 30, 2006, operates as a bar to an election in the petitioned-for unit.

FACTS

The bargaining relationship between the Employer and the Iberia Drivers Association began in 1989 and has produced four contracts since its inception. The current labor agreement, as noted above, covers the period from January 1, 2000 through June 30, 2006. The petition in this case was filed on March 5, 2004.

The record reveals that the current agreement contains four sections divided into "Articles," that address matters such as wages and working conditions, contract termination, dispute settlement and no strike/no lockout provisions. The Employer, through its chief negotiator, Terminal Manager Lee Faulkner, negotiated the current agreement with certain Driver Representatives at the Employer's facility. Driver Representative Thomas Hartstine testified the employees had authorized the Driver Representatives to reach an agreement with the Employer on their behalf.

The owner of TAB LEASING, INC. Harold Baker Jr. testified that he also owns another trucking company in Dover, Ohio, Baker Hi-Way Express, that is a party to a collective bargaining agreement with Teamsters Local No. 92. Baker testified that, in his particular industry, custom and practicality dictate that employers enter into collective bargaining agreements with labor organizations for an average of five years or more, and that labor agreements of three years are viewed as "obsolete." Baker cited the five-year cycle for investing in equipment as the need for the extended duration of such agreements. He provided a detailed account of the loan application process and the considerations made by his companies prior to committing capital to over-the-road equipment.

In support of its position, the Employer introduced copies of labor agreements either it or Baker Hi-Way Express had previously executed with other labor organizations to demonstrate frequency of contracts with a duration of more than three years in the trucking industry. (Employer's Exhibits 10, 11 and 12).

ANALYSIS

When a petition is filed for a representation election among a group of employees who are covered by a collective-bargaining contract, the Board must decide whether the asserted

contract exists in fact and whether it conforms to certain requirements. If the Board finds that the contract does exist and that the requirements are met, the contract is held a bar to an election. **Hexton Furniture Co.**, 111 NLRB 342 (1955). The basic requirements the Board considers when examining the adequacy of a contract are outlined in **Appalachian Shale Products Co.**, 121 NLRB 1160 (1958). The burden of proving that a contract is a bar is on the party asserting the contract bar doctrine. **Roosevelt Memorial Park**, 187 NLRB 517 (1970). In the instant case the present contract between the Employer and the Drivers' Association meets the adequacy requirements of **Appalachian Shale**.

Over time, the Board has weighed the competing considerations of achieving stable industrial relations while preserving employee freedom of choice in its application of the contract bar doctrine, ultimately striking a balance in **General Cable Corp.**, 139 NLRB 1123, (1962). In **General Cable**, the Board addressed the issue of whether the duration of a contract could adversely affect public policy to the extent that it would inhibit employees to freely choose their representatives for the purposes of collective bargaining at reasonable intervals.

The Board ultimately decided that a contract having a fixed term of more than three years operates as a bar to an election for as much of its term as does not exceed three years. **General Cable Corp.**, *supra*; **General Dynamics Corp.**, 175 NLRB 1035 (1969). According to the Board's decision in **Benjamin Franklin Paint Co.**, 124 NLRB 54 (1959), the three year period from which a contract acts as a bar runs from its effective date.

The facts of the instant case, when considered in light of current Board law, support a finding that the current agreement between the Employer and the Iberia Drivers Association does not act as a bar to the election the Petitioner seeks in the above-mentioned unit. According to Article 2 of Employer's Exhibit 9, the duration of the contract encompasses a fixed term commencing on January 1, 2000, through and including June 30, 2006. As noted above, the record reflects that the Petitioner filed its petition on March 5, 2004, more than three years from the inception of the current agreement.

The Employer concedes in its post-hearing brief that **General Cable Corp.** is the controlling Board law regarding this issue, yet it attempts to advance an argument in support of altering the Board's standard in this area of the law based upon what it views as practical and effective for its particular industry. I am, of course, bound to apply existing Board precedent in resolving this case. See **Iowa Beef Packers, Inc.**, 144 NLRB 615, 616 (1963).

Applying existing precedent and based on the record as a whole, I conclude that the contract between the Employer and the Iberia Drivers Association does not act as a bar to an election sought by the Petitioner. I shall therefore direct an election among employees in an appropriate unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees of TAB Leasing, Inc., in the bargaining unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters, Chauffeurs, & Helpers Local Union No. 40, a/w International Brotherhood of Teamsters, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 14th, 2004.

DATED at Cleveland, Ohio this 30th day of April, 2004.

“/s/ [Frederick J. Calatrello]”

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8